

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for October 27, 2004 PLANNING COMMISSION MEETING

P.A.S.: Use Permit #150B - Appian Way Phase II

PROPOSAL: To waive the maximum allowed height in the B-5 district from 40' to 60' on Lots 1, 2, and 3, Block 3 which are designated for hotels, business hotels, and specialty hotels.

LOCATION: South 87th Street and Highway 2.

LAND AREA: Approximately 44.86 acres (entire area of the use permit).

CONCLUSION: An adequate separation exists between the proposed hotels and potential future development beyond the limits of this commercial development to mitigate the impact of the increased height.

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| RECOMMENDATION: | Conditional Approval |
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GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached legal description.

EXISTING ZONING: B-5 Planned Regional Business

SURROUNDING LAND USE AND ZONING:

| | | |
|--------|--------------------------|----------|
| North: | Regional Shopping Center | B5 |
| South: | Agriculture, Residential | AG |
| East: | Commercial | H-4 |
| West: | Agriculture, Residential | AG & AGR |

ASSOCIATED HISTORY:

August 9, 2004 - Change of Zone #04039 from H-4 to B-5, Special Permit #2046A for Planned Service Commercial in H-4, and Use Permit #150A - Appian Way Phase II were approved revising the street layout, and reducing the area in H-4 and increasing the area in B-5.

April 16, 2004 - The final plat of Appian Way Phase II Addition was approved creating 2 lots and eight outlots.

March 15, 2004 - , Annexation #03002, Change of Zone #3411, Special Permit #2046, and Use Permit #150 to allow 357,500 square feet of commercial and retail floor area (290,000 square feet on eight lots in B-5; 67,500 square feet on five lots in H-4).

November 5, 2001 - The annexation agreement covering the land on both sides of Highway 2 at South 91st Street was approved.

November 5, 2001 - The preliminary plat and use permit for Appian Way (now Prairie Lakes) was approved north of Highway 2.

March 26, 2001 - The Southeast Lincoln/Highway 2 Subarea Plan was approved.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page F95 - Bicycle and Trail Standards for Developing Areas - The Plan calls for the trail system to extend along both South 91st Street and the Omaha Public Power rail line.

Page F156 - Subarea Planning - Southeast Lincoln/Highway 2 Subarea Plan.

Southeast Lincoln/Highway 2 Subarea Plan:

Figure 2 - Designates office, service and residential transition uses for this site.

Page 9 - Promote a Desirable Entryway - Calls for a 400' wide open space corridor along this section of Highway 2.

Page 9 - Designates a regional shopping center at this location.

Page 10 - Commercial transition - Within commercial areas, office and lower intensity uses along with appropriate buffer areas should be developed as a transition to adjacent residential uses.

Page 13 - Entryway Corridor - To preserve the entryway corridor, the land use and transportation decisions are equally important as landscaping or architectural standards.

Page 57 - The Greenprint Challenge: Implementation Principles

- Obtain reasonably constrained regulations – Maintaining a balance between the natural and human built environment is always a delicate one. Planning policy and regulatory approaches employed in achieving the Plan's Vision and Greenprint Challenge should strive to be effective, tempered, pragmatic, circumscribed, and respectful of private property rights.

- Prevent the creation of a "wall-to-wall city" through the use of green space partitions – As cities and villages expand, establishing corridors and districts of green should be part of the growth process. This often requires the advance delineation of these areas and the means for securing their on going maintenance.

-Establish effective incentives for natural resource feature preservation. Securing the long term permanence of green space is a basic dilemma in natural resources planning. The use of "green space development incentives" (e.g., setting aside non-buildable areas, creating green space preserves, density bonuses) should be a primary consideration in implementing this Plan.

ANALYSIS:

1. Hotels have been shown as part of the use permit since the original approval. The applicant states he is working with two hotels interested in locating in this development whose building plans exceed the maximum allowed height of 40' for the B-5 district.
2. This request will allow the maximum height to be increased from 40' to 60' on Lots 1, 2, and 3, Block 1, which lie along the south boundary of the development. Lots 1, 2, and 3 are bounded by outlots dedicated as open space on the east and west, by both an outlot and active railroad line to the south, and by other lots within the commercial center to the north which are designated for various commercial and retail uses.
3. The B-5 Planned Regional Business district was designed to accommodate larger shopping centers while ensuring compatibility with surrounding uses. The height and area regulations can be varied when it can be demonstrated that either the impact upon surrounding properties can be mitigated, or that it only affects those properties internal to the development.
4. The applicant notes that no building constructed on these three lots will be closer than 180' to potential uses south of the railroad. This is due to a 100' wide railroad right-of-way, a 50' wide undevelopable outlot, and a 30' sanitary sewer easement.
5. There is no applicable standard for a setback-to-height ratio in the Zoning Ordinance. However, the Design Standards for community unit plans do require apartment buildings to be setback from property lines a distance equal to, or greater than their height. Using that 1:1 ratio as a basis for comparison, this request provides a 3:1 ratio assuming the buildings are built to the maximum allowed height being requested.
6. Height and area regulations primarily ensure compatibility of scale among uses and provide for adequate light and open space between buildings. A 180' wide separation between the proposed hotels and any future development to the south adequately provides for these issues. As a result, allowing the proposed hotels to be built to 60' will not have a significant impact upon the present or future development potential of adjacent lands.

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the site plan as follows:
 - 1.1.1 The surveyor's and engineer's certificates must be signed.
 - 1.1.2 The note indicating the land area under "DEVELOPMENT AREA" modified to either state the total area for the development, or provide a breakdown for both the use permit (44.86 acres) and the special permit for planned service commercial in H-4 (8.67 acres).
2. This approval adjusts the maximum height in the B-5 district from 40' to 60 on Lots 1, 2, and 3, Block 3.

General:

3. Before receiving building permits:
 - 3.1 The permittee shall have submitted a revised and reproducible final plan including 6 copies and the plans are acceptable.
 - 3.2 The construction plans shall comply with the approved plans.
 - 3.3 Final Plats shall be approved by the Planning Director consistent with the approved use permit.

Standard:

4. The following conditions are applicable to all requests:
 - 4.1 Before occupying the buildings all development and construction shall have been completed in compliance with the approved plans.
 - 4.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established association approved by the City Attorney.

- 4.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 4.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 4.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.
5. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Brian Will, AICP, 441-6362, bwill@ci.lincoln.ne.us
Planner
October 15, 2004

APPLICANT: Eiger Corporation
RR#1, Box 93A
Adams, NE 68301
(402) 432-8975

CONTACT: DaNay Kalkowski
Seacrest and Kalkowski
1111 Lincoln Mall
Lincoln, NE 68508
(402) 435-6000

OWNER: Andermatt, LLC
RR#1, Box 93A
Adams, NE 68301

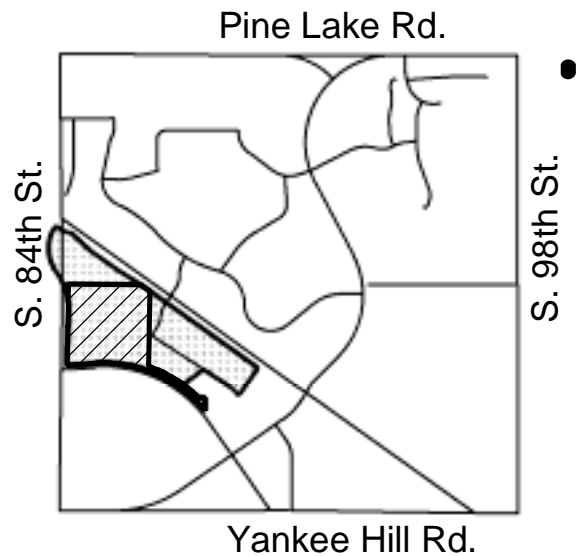
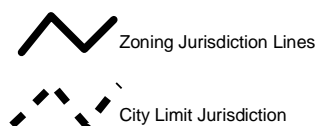


Use Permit #150B S 91st St. & Hwy #2

Zoning:

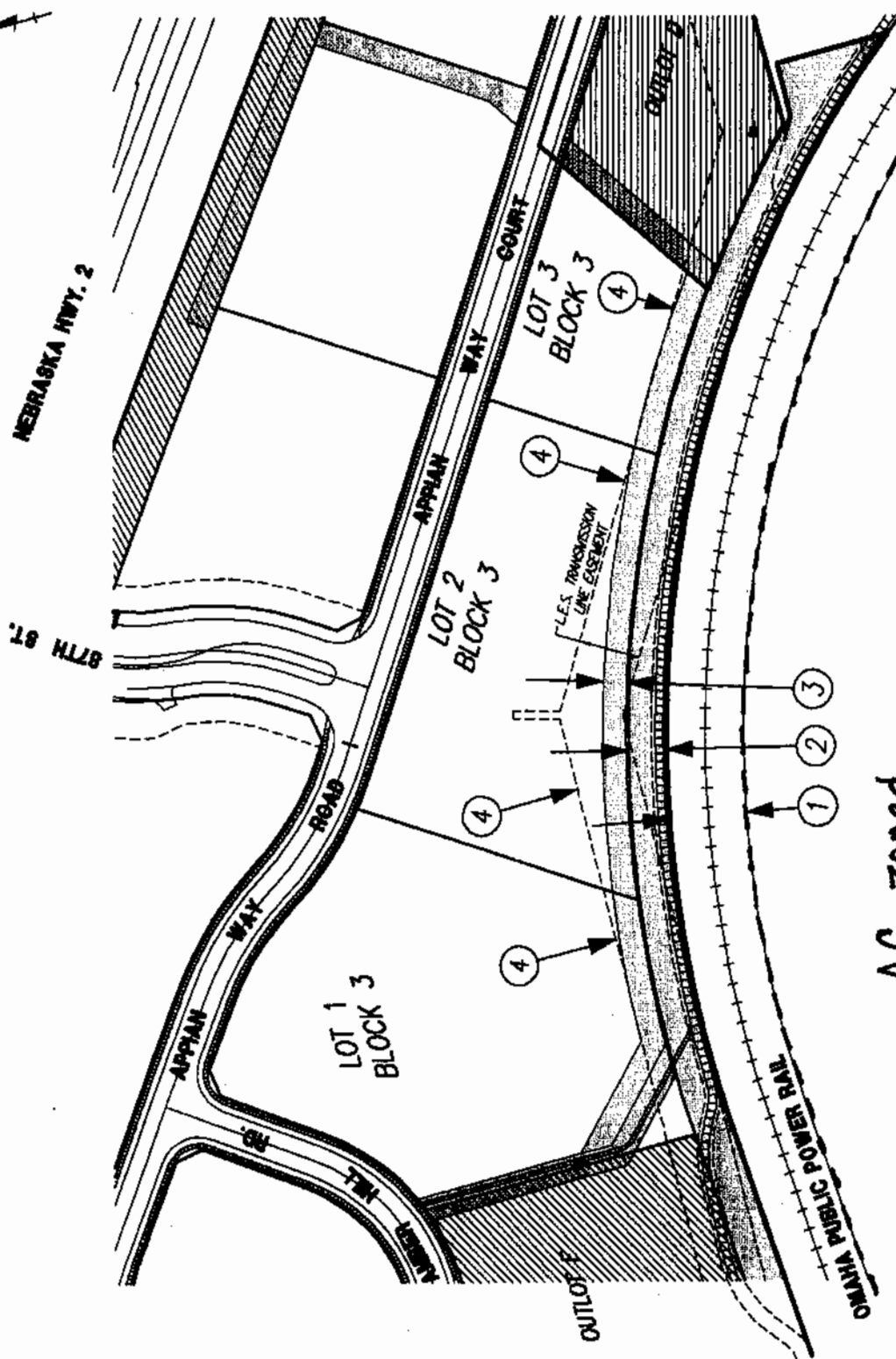
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|------------|--|
| R-1 to R-8 | Residential District |
| AG | Agricultural District |
| AGR | Agricultural Residential District |
| R-C | Residential Conservation District |
| O-1 | Office District |
| O-2 | Suburban Office District |
| O-3 | Office Park District |
| R-T | Residential Transition District |
| B-1 | Local Business District |
| B-2 | Planned Neighborhood Business District |
| B-3 | Commercial District |
| B-4 | Lincoln Center Business District |
| B-5 | Planned Regional Business District |
| H-1 | Interstate Commercial District |
| H-2 | Highway Business District |
| H-3 | Highway Commercial District |
| H-4 | General Commercial District |
| I-1 | Industrial District |
| I-2 | Industrial Park District |
| I-3 | Employment Center District |
| P | Public Use District |

One Square Mile
Sec. 23 T09N R07E



USE PERMIT AND SPECIAL PERMIT SITE PLAN



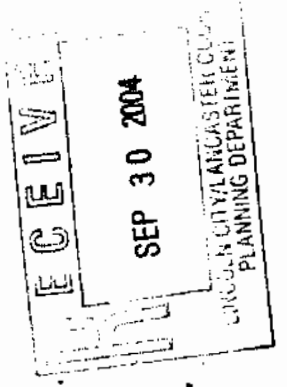
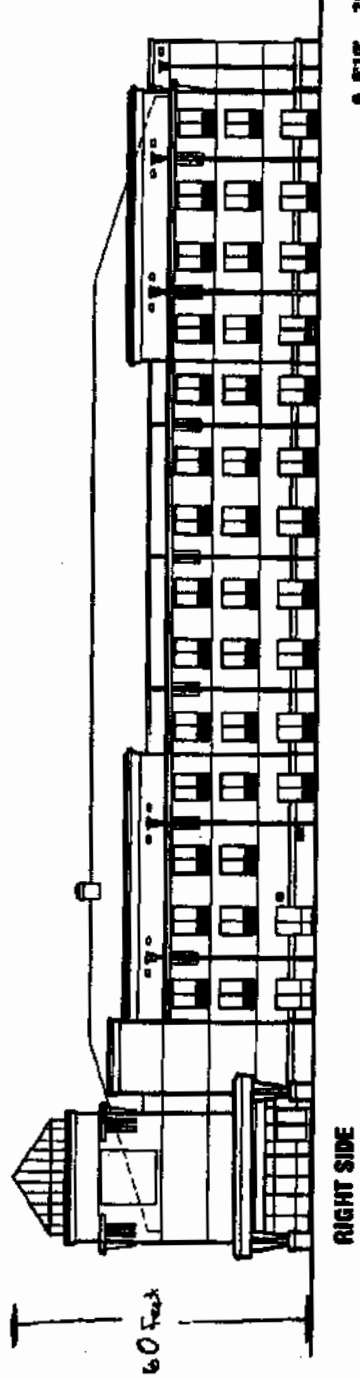
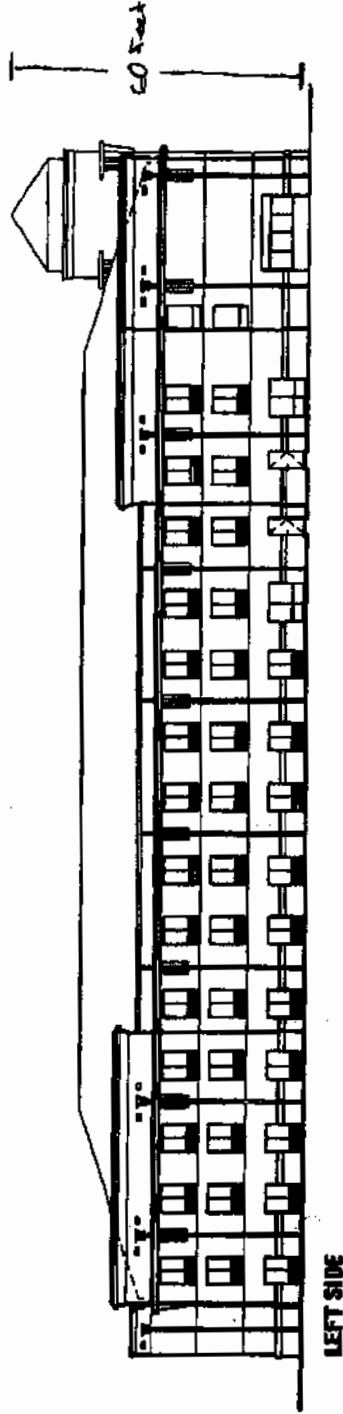
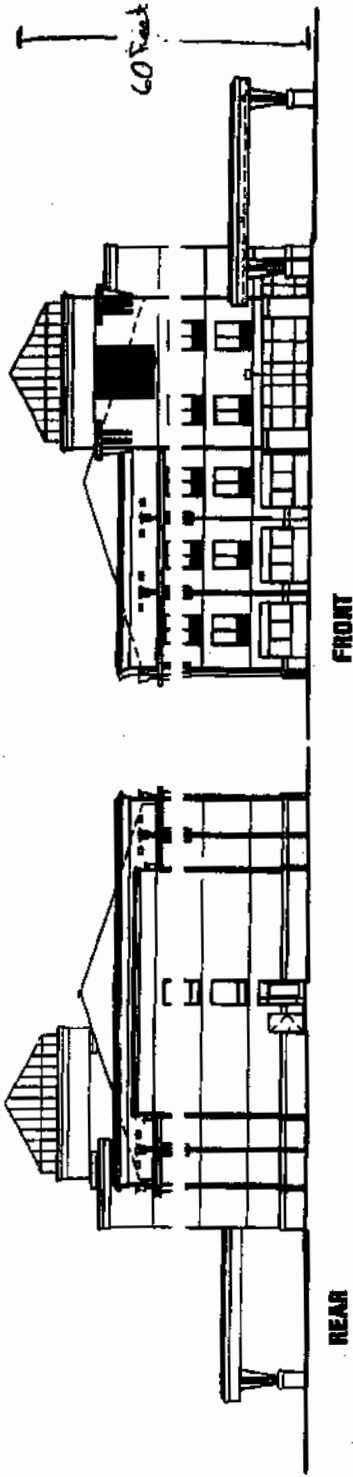


AG zoned
property

- ① 100' RAILROAD RIGHT-OF-WAY
- ② 50' OUTLOT E
- ③ 30' SANITARY SEWER EASEMENT
- ④ NORTH LINE OF L.E.S. TRANSMISSION LINE EASEMENT AND BUILDING SETBACK LINE

RECEIVED
SEP 30 2004
CITY OF LANCASTER COUNTY
PLANNING DEPARTMENT

FOR REFERENCE ONLY





FOR REFERENCE ONLY



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SEP 30 2004

LANCASTER
TRAINING DEPARTMENT

SEACREST & KALKOWSKI, P.C.

1111 LINCOLN MALL, SUITE 350
LINCOLN, NEBRASKA 68508-3905

TELEPHONE (402) 435-6000
FACSIMILE (402) 435-6100

KENT SEACREST
E-MAIL: kent@sk-law.com

DANAY KALKOWSKI
E-MAIL: danay@sk-law.com

September 29, 2004

HAND DELIVERY

Marvin Krout
Planning Director
555 South 10th Street
Lincoln, NE 68508

RE: Height Waiver Request

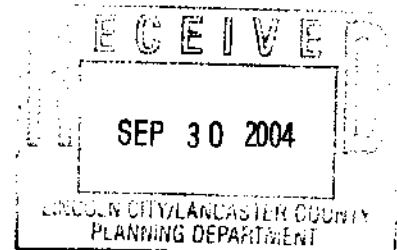
Dear Marvin:

Eiger Corp. is hereby requesting an Amendment to Use Permit #150A to increase the height restriction on Lots 1, 2 and 3, Block 3 from 40 feet to 60 feet. The uses identified on these Lots are Business Hotel, Specialty Retail and Hotel. Eiger Corp. is working with two separate hotels who desire to locate within the area. Both hotels require a waiver of the 40 foot height restriction imposed by the B-5 zone. Enclosed herein please find the following:

1. Application
2. Application fee of \$740.00
3. Six copies of the Site Plan
4. Three potential hotel buildings for illustrative purposes only

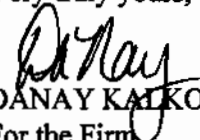
Any building constructed on Lots 1, 2 or 3 will be set back a minimum of 180 feet from the property line of the AG zoned property located directly to the south. Enclosed please find an Exhibit which shows the building set back line on the Lots in relation to the AG zoned property to the south. The buildable areas on the Lots are separated from the AG property to the south by a 100 foot railroad right-of-way, 50 foot outlot, 30 foot sanitary sewer easement and, in some cases, an even wider LES transmission line easement.

Eiger Corp. believes the separation from the property to the south, as well the Prairie Lake Village Protective Covenants in existence which govern the aesthetic quality of the buildings that can be built upon the Lots, protect the nearest neighbors from any adverse impact resulting from the height waiver.



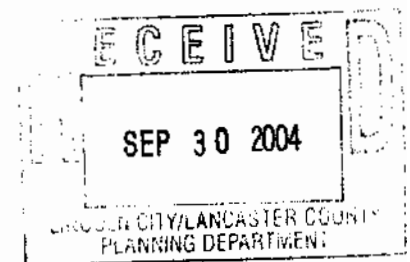
If you have any questions or need any additional information, please feel free to give me a call.

Very truly yours,


DANAY KALKOWSKI
For the Firm

Enclosures

cc: Kelvin Korver



APPIAN WAY REGIONAL CENTER, PHASE 2
USE PERMIT LEGAL DESCRIPTION
FOR B-5 ZONING

A TRACT OF LAND COMPOSED OF ALL OF LOTS 83, 114 AND 115, IRREGULAR TRACTS, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, A PART OF OUTLOT A, APPIAN WAY REGIONAL CENTER PHASE 2 ADDITION, ALL OF OUTLOT B, APPIAN WAY REGIONAL CENTER PHASE 2 ADDITION, A PART OF OUTLOT C, APPIAN WAY REGIONAL CENTER PHASE 2 ADDITION, ALL OF OUTLOTS E, F, G AND H, APPIAN WAY REGIONAL CENTER PHASE 2 ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, ALL OF LOT 81, IRREGULAR TRACT, LOCATED IN THE NORTHWEST QUARTER OF SECTION 23, A PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23, A PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 23 AND A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, ALL IN TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE SIXTH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER SECTION 23; THENCE S 89°52'54" E, ASSUMED BEARING, ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER SECTION A DISTANCE OF 8.32 FEET TO THE FUTURE EASTERLY RIGHT OF WAY LINE OF SOUTH 84TH STREET AND THE POINT OF BEGINNING, SAID POINT ALSO BEING THE POINT OF CURVATURE OF A 585.00 FOOT RADIUS CURVE, CONCAVE TO THE WEST; THENCE NORTHWESTERLY ALONG SAID FUTURE EASTERLY RIGHT OF WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 5°19'51" AN ARC DISTANCE OF 54.43 FEET, THE CHORD OF SAID CURVE BEARS N 29°31'49" W, A DISTANCE OF 54.41 FEET; THENCE N 32° 11'45" W ALONG SAID FUTURE EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 136.19 FEET TO THE POINT OF CURVATURE OF A 465.00 FOOT RADIUS CURVE, CONCAVE TO THE EAST; THENCE NORTHERLY ALONG SAID FUTURE EASTERLY RIGHT OF WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 04°50'15" AN ARC DISTANCE OF 39.26 FEET, THE CHORD OF SAID CURVE BEARS N 29°46'38" W, A DISTANCE OF 39.25 FEET; THENCE N 62°38'30" E ALONG SAID FUTURE EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 5.00 FEET TO A POINT ON A 460.00 FOOT RADIUS CURVE, CONCAVE TO THE EAST; THENCE NORTHERLY ALONG SAID FUTURE EASTERLY RIGHT OF WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 56°22'59" AN ARC DISTANCE OF 452.67 FEET, THE CHORD OF SAID CURVE BEARS N 00°49'59" E, A DISTANCE OF 434.63 FEET; THENCE N 29°01'29" E ALONG SAID FUTURE EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 39.29 FEET TO THE INTERSECTION WITH THE FUTURE SOUTHERLY NEBRASKA HIGHWAY NO. 2 RIGHT OF WAY LINE; THENCE S 58°04'03" E ALONG SAID FUTURE SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 125.63 FEET TO AN INTERSECTION OF THE EXISTING SOUTHERLY RIGHT OF WAY LINE OF NEBRASKA HIGHWAY NO. 2 AND THE EASTERLY EXISTING SOUTH 84TH STREET RIGHT OF WAY LINE; THENCE S 74°45'16" E ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 74.68 FEET; THENCE S 48°10'50" E ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 301.81 FEET; THENCE S 54°27'15" E ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 400.00 FEET; THENCE S 58°59'08" E ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 290.85 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION; THENCE S 54°27'18" E ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1615.21 FEET; THENCE S 51°36'51" E ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 43.11 FEET; THENCE S 35° 32'47" W, A DISTANCE OF 346.74 FEET; THENCE S 56°35'33" W, A DISTANCE OF 36.02 FEET TO THE POINT OF CURVATURE OF A 369.50 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHWEST; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 21°15'29" AN ARC DISTANCE OF 137.09 FEET, THE CHORD OF SAID CURVE BEARS N 46° 26'38" W, A DISTANCE OF 136.31 FEET; THENCE N 57°04'22" W, A DISTANCE OF

**APPIAN WAY REGIONAL CENTER, PHASE 2
USE PERMIT LEGAL DESCRIPTION
FOR B-5 ZONING**

349.77 FEET; THENCE S 54°44'21" W, A DISTANCE OF 284.85 FEET TO THE POINT OF CURVATURE OF A 1544.43 FOOT RADIUS CURVE, CONCAVE TO THE SOUTH; THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 08°29'28" AN ARC DISTANCE OF 228.88 FEET, THE CHORD OF SAID CURVE BEARS S 49°41'49" E, A DISTANCE OF 228.67 FEET TO A POINT ON THE SOUTHERLY LINE OF AN EXISTING LINCOLN ELECTRIC SYSTEM TRANSMISSION LINE EASEMENT RECORDED AS INSTRUMENT NUMBER 95-12607 AT THE LANCASTER COUNTY REGISTER OF DEEDS; THENCE S 89°01'14" W ALONG SAID EASEMENT LINE, A DISTANCE OF 10.53 FEET; THENCE S 59°00'27" E A DISTANCE OF 22.10 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER SECTION 23; THENCE N 89°58'00" E ALONG SAID QUARTER SECTION LINE, A DISTANCE OF 67.89 FEET; THENCE S 00°02'00" E A DISTANCE OF 146.74 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF THE OMAHA PUBLIC POWER DISTRICT'S RAILROAD LINE AND THE POINT OF CURVATURE OF A 1494.43 FOOT RADIUS CURVE, CONCAVE TO THE SOUTH; THENCE NORTHWESTERLY ALONG SAID NORTHERLY RIGHT OF WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 55°34'19" AN ARC DISTANCE OF 1449.47 FEET, THE CHORD OF SAID CURVE BEARS N 66°52'50" W, A DISTANCE OF 1393.32 FEET; THENCE S 85°20'00" W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 303.52 FEET TO THE EXISTING EASTERLY RIGHT OF WAY LINE OF 84TH STREET, SAID POINT LOCATED 70.00 EASTERLY OF, PERPENDICULAR MEASUREMENT, THE WEST LINE OF SAID SOUTHWEST QUARTER SECTION 23; THENCE N 00°52'06" E ALONG SAID EXISTING EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 167.34 FEET TO A CORNER OF SAID EASTERLY RIGHT OF WAY LINE; THENCE N 02°10'26" E ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 60.05 FEET; THENCE N 01°25'12" E ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 427.70 FEET TO THE POINT OF CURVATURE OF A 585.00 FOOT RADIUS CURVE CONCAVE TO THE WEST; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 08°25'33" AND ARC DISTANCE OF 86.03 FEET, THE CHORD OF SAID CURVE BEARS N 02°47'39" W, A DISTANCE OF 85.95 FEET TO A CORNER OF SAID LOT 115; THENCE CONTINUING NORTHERLY ALONG THE FUTURE EASTERLY RIGHT-OF-WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 19°51'29" AND ARC DISTANCE OF 202.75 FEET, THE CHORD OF SAID CURVE BEARS N 16°56'10" W, A DISTANCE OF 201.74 FEET TO THE SOUTH LINE OF SAID NORTHWEST QUARTER SECTION AND THE POINT OF BEGINNING, CONTAINING AN AREA OF 1,953,951.67 SQUARE FEET (44.86 ACRES) MORE OR LESS.